

### **State Records Committee Meeting**

Location: Courtyard Meeting Room, 346 S. Rio Grande St., SLC, UT 84101

Date: September 13, 2018

Time: 9:00 a.m. – 4:00 p.m.

#### **Committee Members Present:**

David Fleming, Chair, Private Sector Records Manager  
Holly Richardson, Chair Pro Tem, Citizen Representative  
Kenneth Williams, Governor's Designee  
Patricia Smith-Mansfield, Citizen Representative  
Tom Haraldsen, Media Representative

Cindi Mansell, Political Subdivision Representative: Absent  
Brad Westwood, History Designee: Absent

#### **Legal Counsel:**

Paul Tonks, Assistant Attorney General, Attorney General's Office  
Nicole Alder, Paralegal, Attorney General's Office

#### **Executive Secretary:**

Gina Proctor, Utah State Archives

#### **Telephonic participation:**

Chad Bennion

#### **Others Present:**

Randy Andrus, Andrus Law Firm  
Lonny Pehrson, Attorney General's Office  
Tonya Mortensen, SITLA  
Brigid Carney, SITLA  
Mike Johnson, SITLA  
Harry Souvall, Unified Police Department  
Justin Lee, Lt. Governor's Office  
Derek Branchley, Lt. Governor's Office  
Nate Sumbot, Governor's Office  
Raphael Cordray, Utah Tar Sands Resistance  
Lionel Trepanier, Utah Tar Sands Resistance  
Sonny Dulfo, Utah State Archives

Rosemary Cundiff, Utah State Archives  
Rebekkah Shaw, Utah State Archives

**Agenda:**

- Six Hearings Scheduled
  - Randy Andrus v. Unified Police Department
  - Chad Bennion v. Attorney General's Office
  - Chad Bennion v. Attorney General's Office
  - Chad Bennion v. Governor's Office
  - Chad Bennion v. Lt. Governor's Office
  - Raphael Cordray v. SITLA
- Approval of August 9, 2018, Minutes, action item
- Report on Appeals Received
- Discussion, action item
  - Amendments to Rule 35 1-2 Requests to Postpone Hearings.
- Report on Cases in District Court
- Other Business
  - Confirm a quorum for October meeting.
  - Next Meeting scheduled for October 11, 2018, 9 a.m. - 4 p.m.

**Call to Order: (001:13)**

The Chair, Mr. David Fleming, called the meeting to order at 9:03 a.m. The Chair asked the Committee members to introduce themselves. The Chair explained the procedures and stated the restrictions on mediation and reminded the parties that mediation discussions are prohibited and excluded from testimony.

**1. Randy Andrus v. Unified Police Department (UPD) (0:01:30)**

The Chair announced the parties for the hearing. The Chair asked the Petitioner and Respondent to introduce themselves for the record. Randy Andrus, Petitioner, and Harry Souvall for Unified Police Department, UPD, Respondent.

**Petitioner (0:04:28)**

Mr. Andrus reviewed the history of his request since November 2016 and the delays experienced in obtaining the investigation file and other responsive records due to Salt Lake City Police Department's lengthy investigation of the UPD accident case and screening for any possible criminal charges.

UPD recently provided a flash drive with the 170-page SLCPD accident reconstruction report in their investigation file and 13 pages previously provided in May 2017.

Issues with the records on the flash drive:

- 1) The 13 pages claimed as duplicative.
- 2) 170-page .PDF is the investigation file from SLCPD and not UPD's investigation file.
- 3) It appears UPD is withholding documents.

4) The fee is excessive.

The UPD produced a certification that they have provided all records including 188 pages and four additional pages of the Fleet Review Board of May 2018.

Mr. Andrus states that it is an improper burden for him to tell UPD what documents UPD has that should be provided. Some records he feels they should have are:

Photographs of the scene, people, vehicles;

Video of the scene, people, and vehicles;

UPD's Mr. Hansen's own recorded written statement;

Declination letter from SLCPD or DA Office which indicated that it would be coming;

Screening records;

Ambulance services records and payments to the ambulance company;

UPD records sent to SLCPD to assist with the investigation;

Profile of the deceased and any other records UPD provided to the investigation;

Fleet report of the Review Board;

Check to Gold Cross Ambulance from UPD.

Service provider records.

Mr. Andrus shows records he received from third-parties that are emails, checks, and billings from UPD to the other parties. Mr. Andrus would like these records to be produced from UPD.

Mr. Andrus requests the Committee to order UPD to provide all records about this matter and stop hiding the ball and to cancel the bill for the records they did provide and continue this matter to make sure compliance has been fully made.

**Respondent (0:19:15)**

Mr. Souvall explains the Protocol for a Officer Involved Critical Incident and page 13, attachment 3, paragraph 13 in his brief. The Protocol Investigative Team controls the records until a declination letter is received from the DA. The investigation is then completed and the file is returned. The records are not UPD's until they receive a declination letter, which they still do not have. There never was one. A meeting with the DA reviewed the matter with the investigative officers. Based upon the investigation report they will not be filing charges, which is why there was a Fleet Review Board meeting in May of this year to determine whether it was an avoidable accident. In August of this year Mr. Souvall became aware of this. He provided, on August 24, an email to the petitioner stating that he can now provide the investigation file. He states that he is not aware of the documents Mr. Andrus showed the Committee. He has not seen any of the emails and does not know where Mr. Andrus got them. Today is the first knowledge he has of those records. There is no effort to hide the ball. If Mr. Andrus has other records he is aware of and would send those to Mr. Souvall, he will search for them. What records are left is a mystery since he has clarified with the Records Manager that they have provided everything, including an additionally located Fleet Review Board record to screen if this was an avoidable accident. He provided a certificate from the Records Manager that all the records had been provided.

Mr. Andrus now has the records of damages, UPD's limited investigation participation records, and the Salt Lake City Investigation file.



**Questions from Committee to Respondent (0:27:33)**

The Chair asks why no video, body cam or dash cam exist.

There are none since this was before the roll-out of those to officers. If there were video it would have been secured immediately. The officer and car were not equipped with body cam or dash cam. The fact that there was no video shown at the screening tells that there was none. There was video from a local business but it was very dark, raining heavily, and the power was out in the area so no other video could be obtained.

Ms. Smith-Mansfield asks what other records exist that are not part of that investigation. What about correspondence communications such as emails?

Mr. Souvall did not go through his emails due to their protected nature of them for attorney-client privilege. Ms. Smith-Mansfield reminds committee members that the governmental entity is required to provide the nature of the records they do have and why they are not providing them along with a statute citation. Mr. Souvall admits that it is a deficiency on their part. There was not a search for emails.

Mr. Haraldsen asks about the time frame of when UPD turned the case over to SLCPD and SLCPD begins their investigation. Was it from the night of the accident? Mr. Haraldsen clarifies that Mr. Souvall just found out in August that they had completed the investigation? It's a long time to not receive any word about it. Is there someone that sits on this case and tries to move it along?

Mr. Souvall explains that the file does not become theirs until a declination letter is provided. They still do not have one on this case. There was a verbal declination and then they produced the file. This was an unusual case in that it was determined to be an unavoidable accident instead of a use-of-force matter, it was treated a little differently.

The Chair asks whether Mr. Souvall could speak to the timing of when UPD received the report and when they produced it.

Mr. Souvall relates that his information shows they received it around the end of May 2018. He was told in August by the Records Officer that she had seen that UPD had the report. That is when he determined that they should turn it over to Mr. Andrus.

Mr. Souvall states that he can ask for any emails about this be searched for and make a response for that. They will go through those and do a recheck on this. Technically under the protocol this may still not be their record. But in light of the long time period they deem that it is their record. They still have not received a declination letter. It was just a passing conversation.

The Chair asks Mr. Souvall to talk about the screening process, records in the screening, and when it occurred?

Mr. Souvall reviews the screening process. It was about one year before it was screened. The meeting included SLC who was the investigating agency, the District Attorney, and senior



command UPD staff who were invited. In this specific screening there were also the senior members of DA Office and the officer from SLC who lead the investigation; their accident reconstruction officer.

Mr. Souvall reports that the screening results indicated it was an unavoidable accident based on the calculations and the stopping distances. They said they would get a declination letter. Then a year went by and they still don't have a letter. Mr. Souvall discovered that the record had been returned in August. In the investigation file are photographs, sketches, and drawings. It is a thorough report and it goes through what they did to find whether it was an unavoidable accident.

**Closing by Petitioner (0:41:08)**

Mr. Andrus is willing to provide the five records which indicate that other records are available, including UPD record identification, emails from Mr. Souvall, and a check from UPD. The timing of the declination and screening process is reviewed. An individual has one year to bring a government claim. He requests all records and he requests a continuance to be sure that all records have been searched for.

**Closing by Respondent (0:44:46)**

Mr. Souvall discusses the documents Mr. Andrus provided to him and states better communication could have resolved some of the problems. He will commit to doing a records check for an email review and find out whether the record on the DA's letterhead was received by someone and produce it. The nature of how this matter was investigated has slowed this process. Mr. Souvall is agreeable to a continuance so he can update the Committee and the records can be reviewed.

**Deliberation (0:48:24)**

The Chair considers a motion that the Respondent is to take action on this evidence and order the Petitioner to provide all the written evidence which he has that indicate that UPD has not produced all records.

Ms. Smith-Mansfield discusses sharing records and the need to establish a protocol for returning the records. The agency should look at the records that were not shared with the investigating agency but were requested and produce it or, given that access may be restricted, deny the request and identify those with citations.

The Chair discusses the necessity to continue the hearing and that he is disinclined to order a continuance.

A motion is made by Ms. Smith-Mansfield that the respondent is to go back and look at the original request and search for the records, including communications records, which may be in the office and either produce them or identify the records they have and provide the citations restricting the access and to provide the petitioner with an opportunity to appeal any denial of access restriction to come back to the Committee. Seconded by Ms. Richardson.

**Motion** is made by Ms. Smith-Mansfield: The Committee believes the investigative records have been provided by the governmental entity. The governmental entity is responsible for doing a thorough search of the other records that they own, especially of communication records, to see if there is anything else that should be provided pursuant to the original request and classify them. If the Petitioner is not satisfied he can disagree with the classification or disagree that he received all the responsive records; §63G-2-201(1) and §63G-2-205(2).

Ms. Alder restated the motion: This matter is to be continued based on the governmental entity going back and looking at the original request and doing a search of those records and communications and other records they might have in their office and produce those to the petitioner or produce a citation to the petitioner of the records they are restricting and why they are restricting access. Allow the governmental entity the opportunity to classify the records as either public or non-public. §63G-2-201(1) and §63G-2-205(2).

Vote: Aye - 5, Nay - 0. Motion carries 5-0. Mr. Fleming, Ms. Richardson, Mr. Williams, Ms. Smith-Mansfield, and Mr. Haraldsen voting for the motion.

The Committee ordered the **continuance** in this matter held at the next scheduled hearing date to allow for the Respondent to conduct a search for written communications, emails, and additional records.

Five-minute break (1:06:39)

2. **C. Edward Bennion v. Attorney General's Office (AGO) (2 cases, #2017-44 and #2018-32)**  
**(1:07:24)**

The Petitioner was connected telephonically. The Chair introduced the Committee. Mr. David Fleming asked the Petitioner and Respondent to introduce themselves for the record. Mr. Chad Bennion, Petitioner, and Lonny Pehrson, Government Records Counsel for the Attorney General's Office.

The Chair explained that the Petitioner has four matters before the Committee. Clarification was made that Mr. Bennion will make his arguments about his motion that will apply to all four cases but with the substitution of the appropriate Respondents' names.

**Petitioner (1:10:58)**

The Petitioner filed his Objection and Motion Appealing Ruling of the Chair Denying Continuance and Request for Relief.

Petitioner argued that he should be granted additional time for mediation to proceed. He discussed that mediation should not be cut off. He relates that he cannot be present at the hearing and is stuck in St. George and there are some medical issues to a party requiring his presence. His paperwork is at his office in Sandy. He relates that the petitioner is undermined by the Chair ending mediation and stalls any good faith in proceeding with a resolution.



**Respondent (1:15:56)**

Respondent expressed his desire to withdraw from mediation. He was prepared to move forward with the hearing this day. Mr. Pehrson explains that mediation has been going on for 18 months and it is not progressing. His understanding is that the Committee can just call the hearing. He prefers to move forward with both of the hearings if that is what the Committee decides.

**Deliberation (1:23:12)**

The Chair explains the reasons for denying the postponement were solely based on the fact that several previous postponements were given. Ms. Smith-Mansfield explains the need to hear a case and issue a decision within 72 days and to prevent an untimely process for other petitioners when postponements are continually given. She explains the provision to agree to extend the time for responses to requests is found in §63G-2-401(5)(c). That is during the time the appeal is before the Chief Administrative Officer; before filing an appeal to the State Records Committee.

Ms. Richardson states that Mr. Bennion's arguments are compelling regarding interrupting mediation. Mr. Haraldsen states that he is not comfortable with denying the continuances and prefers to have petitioners present at the hearing. The Chair offers an option to continue until next month but no longer. Ms. Smith-Mansfield describes the delay other petitioners experience when postponements are continually given, unending and indefinite. The Chair explains that there is no statutory argument against the motion. According to the Administrative Rule, the Chair is the one who decides on postponements. There have been recommendations made, in the past, to the Chair on postponements. But the Chair has not always been the one to make all decisions on postponements. Ms. Richardson is not convinced this matter is a continuance but rather is a postponement and the hearings are not needed to be heard today or next month.

The Chair states that points have been made that we are not properly arguing a continuance we are deciding whether the postponement denial was appropriate.

**Motion** by Ms. Smith-Mansfield: Deny the request for a postponement due to a number of reasons: 1)delays experienced by other petitioners; 2)constant postponements disrupts the committee's business; 3) §63G-2-401(5)(c), the Chief Administrative Officer appeal time frame is the better time to postpone appealing to the Committee while working through the request; 4)the governmental entity has stated the mediation has not been productive and he expressed a desire to hold the hearing today. Seconded by Mr. Williams.

The motion fails 4-1.; Ms. Smith-Mansfield voting for the motion. Mr. Fleming, Ms. Richardson, Mr. Williams and Mr. Haraldsen voting against the motion.



**Motion:** A motion was made by Ms. Smith-Mansfield to deny the request for a postponement in the first instance (2017-44) in which the Respondent has requested that the hearing not be postponed and to approve the motion for postponement in the second instance (2018-32) for not more than six months. Seconded by Mr. Fleming.

The motion passes 3-2; Mr. Williams, Mr. Fleming, and Ms. Smith, Mansfield voting for. Ms. Richardson and Mr. Haraldsen voting in dissent.

**C. Edward Bennion v. Governor's Office**

Respondent is asked to introduce himself for the record. Nathan Sumbot for the Governor's Office.

Respondent expressed no objection to postponing the hearing.

**Motion** by Ms. Smith-Mansfield to accept postponement for not more than six months. Seconded by Ms. Richardson. Motion carries 5-0. Mr. Fleming, Ms. Richardson, Mr. Williams, Ms. Smith-Mansfield, and Mr. Haraldsen voting for the motion. The Committee's decision on the Motion was to **continue** the hearing for not more than six months.

**C. Edward Bennion v. Lt. Governor's Office**

Respondent was asked to introduce himself for the record. Derek Brenchley for the Lt. Governor's Office.

Respondent expressed no objection to postponing the hearing.

**Motion** by Ms. Smith-Mansfield: Accept Postponement for not more than six months. Seconded by Ms. Richardson. Vote: Aye - 5; Nay - 0. Motion carries 5-0. Mr. Fleming, Ms. Richardson, Mr. Williams, Ms. Smith-Mansfield, and Mr. Haraldsen voting for the motion. The Committee's decision on the Motion was to **continue** the hearing for not more than six months.

Mr. Sumbot and Mr. Brenchley were excused from the hearing.

**(2:08:49)** The Committee Chair decides to hear Cordray v. SITLA next and then hear Bennion v. Attorney General's Office (2018-32) in order to allow Mr. Bennion time to gather his records from his computer and ready himself for the hearing.

Five-minute break at 11:22 a.m. **(2:11:07)**

Reconvene at 11:29 a.m. **(2:11:07)**

**3. Raphael Cordray v. School and Institutional Trust Lands (SITLA) (2:11:20)**

The Chair announced the parties for the hearing. Mr. David Fleming asked the Petitioner and Respondent to introduce themselves for the record. Ms. Raphael Cordray, Petitioner. Mr. Mike Johnson, legal counsel for SITLA.

**Petitioner (2:14:46)**

Ms. Cordray's partner/representative, Lionel Trepanier, has two arguments. 1) The SITLA Board has authority to make available the records sought. 2) The records were not properly classified as closed and non-public.

Mr. Trepanier references May 8, 2018, when the amended Open and Public Meeting Act (OPMA) statute §52-4-304(c) became effective. The SITLA Board has the ability to make available the records. He provided testimony about Ms. Cordray's request for records pertaining to a retreat held by the SITLA Board of Trustees in January 2018. Mr. Trepanier also provided three exhibits, documents marked confidential which were mistakenly released to him by a SITLA representative. He reviews the discrepancies between the items on the documents on specific dates.

He speaks to the public interest and the Committee's authority to release them based on public interest. Mr. Trepanier reviews the Committee's decision in Chapman v. Salt Lake City Corporation (17-18) and his views on OPMA and GRAMA related to protected and closed meeting records.

The Chapman decision states, "After having reviewed the written arguments of the parties, hearing testimony and arguments, and carefully reviewing the applicable statutes, the Committee finds that it does not have the authority to release the requested records pursuant to Utah Code § 52-4-206(5). According to statutory construction, words and phrases are to be construed according to the context and the approved usage of the language. Utah Code § 68-3-11. The use of the words "except" and "only" in Utah Code § 52-4-206(5) regarding the disclosure of records of a closed meeting by a court "as provided under Section 52-4-304," combined with the court procedures outlined in Utah Code §§ 52-4-304 and 63G-2-202(7), shows a Legislative intent to limit disclosure of closed meeting records only through court action, and not through the State Records Committee. Although closed meeting records are considered protected records under GRAMA, the more specific procedure provided by OPMA regarding disclosure of records "only as provided under Section 52-4-304" prevails over the Committee's general procedures found in Utah Code § 63G-2-403. If the Legislature intended to allow a dual track for accessing closed meeting records through both the courts and the Committee, the Legislature could have easily added enabling language to OPMA that referenced the Committee. Although the Committee is sympathetic that the issues raised by Mr. Chapman may indeed be of great public interest, the limiting language of Utah Code § 52-4-206(5) regarding disclosure of closed meeting records does not allow the Committee to have the authority to order release of those records."



Mr. Trepanier discusses two avenues to overcome the protected classification. 1) Compel disclosure by court order and 2) the State Records Committee is authorized to release the records to individuals if doing so would weigh in favor of public interest. There are conflicts between Chapman, OPMA, and GRAMA. The plain language of the statute should be used to interpret statute. The words "only" and "except" are misinterpreted and misapplied under the Chapman arguments. It frustrates the policies of OPMA. SITLA keeps the records hidden from the public with a statute that does not apply.

**Respondent (2:35:21)**

Mr. Johnson first addresses the agenda issue that lies at heart of the petitioner's concerns of a closed portion of meeting. He speaks to the documents Mr. Trepanier distributed. Nothing about the changing nature of the documents is argued. On the first document, the agenda 12/29/2017 contains topics that are in dispute. By 1/3/18 the items were removed from the open portion of meeting. The Secretary for Board of Trustees was very new to the position and corrected the agenda. The items were moved off public/open portion of meeting. They were intended to be discussed in the closed portion of the meeting. It is true the items were moved deliberately with the intention of being discussed in the closed portion of the meeting. On the amended agenda they did not appear in the open portion of the meeting. The document marked Confidential was handed out by mistake. OPMA allows a public body to close a meeting. The Board of Trustees voted to close the meeting. The January 5 meeting lists the reasons for closing the meeting and it was a unanimous vote to do so. The only documents the agency has in its possession is the audio recording of the closed portion. SITLA is only arguing about §63G-2-305(32), the recording of the closed portion of the meeting.

Mr. Johnson addresses the issue of whether the document (audio recording) was properly classified. First, per OPMA, they voted to close the meeting, they list the reasons, stating they will be in regular chambers. The minutes reflect that the vote was unanimous. Those are the items OPMA says must be disclosed. It was closed appropriately. It is not a question for this body but for district court. The agency classified the recording as protected in responding to the GRAMA request and cited §63G-305 (32), audio recording of closed meeting. The record is appropriately classified. This now puts us in Chapman, which is what the State Records Committee can address. The State Records Committee can address, overturning themselves on Chapman if they choose so. The statute citations Mr. Trepanier presented were not briefed and the arguments made were not briefed and have not been reviewed by the respondent. SITLA requests the opportunity to respond to those and provide a brief statement about them. The State Records Committee rejected the argument of using the weighing provision in Chapman. Mr. Johnson refers the Committee to paragraph seven of the State Records Committee's position. The provision of GRAMA says that it is protected except as provided in OPMA statute. OPMA is clear; a judge may listen to audio, but the State Records Committee cannot. A remedy is there, provided by the Legislature, for audio recordings to be disclosed, but a judge has to do that. Mr. Johnson speaks to the argument about the notion that nothing in GRAMA precludes a public body from reclassifying a record. The public body refers to SITLA to reclassify a protected record. An agency can change its mind on classification decisions.



**Closing by Petitioner (2:49:50)**

Mr. Trepanier states that when the items were taken off the agenda they were never reinserted on a public agenda. There was no public disclosure that the items will be discussed. They are not properly closed. There is no notice they are closed items. The State Records Committee can order SITLA to reclassify the records as public records. If SITLA wants to oppose the Committee it will have its avenue to do that. The items were hidden.

Ms. Cordray states that the confidential agenda would never have been known if Director David Ure had not given it to her.

**Closing by Respondent (2:53:58)**

Mr. Johnson handed out another version of the agenda (two sheets). This is virtually the same although it covers what is to be discussed in the closed portion. It lists each of the categories under OPMA that are required. The varying topics initially listed was done incorrectly. Confusion is generated by the disclosure of the confidential portion.

**Deliberation (2:59:15)**

The Committee discussed *Chapman v. Salt Lake City Corp.*, State Records Case No. 17-18 (May 22, 2017). In *Chapman* the Legislature intended to limit disclosure of closed meeting records only through court action, and not through the State Records Committee. Subsequent to the Committee's decision in *Chapman*, the Legislature amended §52-4-304 to allow a governmental entity to reclassify a record pursuant to GRAMA as found in §63G-2-307(3) at any time. This could allow the release of protected closed meeting records by a governmental entity (not solely through court action) if they are later reviewed and appropriately classified as public.

**Motion** by Ms. Smith-Mansfield that the records are subject to §63G-2-201(3)(b) and 201(6)(a) and access is restricted by another statute, specifically the Open and Public Meetings Act (OPMA) §52-4-206 and 304. The State Records Committee is subject to OPMA which provides that the ability to reclassify records is solely the authority of the governmental entity. The State Records Committee does not have authority to release the closed meeting records, as set forth in §52-4-206 and 304, a judicial process that reinforces our position in *Chapman*. Seconded by Ms. Richardson.

3:03:35 Vote: Aye - 5; Nay - 0. Motion carries 5-0. Mr. Fleming, Ms. Richardson, Mr. Williams, Ms. Smith-Mansfield, and Mr. Haraldsen voting for the motion.

3:11:09 Discussion regarding the records are protected under GRAMA §63G-2-305 and if subject to another statute per §201(3)(b) and (6)(a) on classification issues, then that one prevails. OPMA is open to a Court Order only. Nothing about the protected clause prevents the public body (governmental entity) from re-classifying it as public and releasing it.

3:23:08 Discussion regarding closed meetings improperly closed and challenges to that.

3:25:04 The intent of SB 137 (2018) was to make sure these appeals do not come to the State Records Committee. The Legislative intent and the language in statute is subject to interpretation.

**Motion** by Ms. Smith-Mansfield: Under the statute, the SRC still does not have authority to release the records under OPMA §52-4-206 and 304. Seconded by Ms. Richardson.

Vote: Aye – 4, Mr. Fleming, Ms. Richardson, Mr. Williams, Mr. Haraldsen; Nay – 1, Ms. Smith-Mansfield voted Nay. Motion carries 4-1.

The Committee **denied** the appeal, as records associated with a closed meeting may only be released through a court order pursuant to Utah Code §52-4-304 or through reclassification of the records by a governmental entity pursuant to Utah Code §63G-2-307.

Recess for 30 minutes. (3:31:46)

Reconvene at 1:25 p.m. (3:32:02)

**4. C. Edward Bennion v. Attorney General's Office (AGO) (2017-44) (3:32:16)**

Mr. Bennion was connected telephonically.

The Chair reminded the parties that mediation is not allowed to be referenced. The introductions were made and the instructions were reviewed.

**Petitioner (3:33:20)**

Mr. Bennion objects to the hearing and objects to the Chair ending mediation. He feels the Attorney General's Office (AGO) is taking advantage of the Committee's decision to allow the matter to go forward and not continue the hearing. He feels harmed by this.

Petitioner's first request was for all records from the Attorney General's Office Litigation Fund, including the current balance of the fund for years 2014, 2015, and 2016. The Petitioner appealed to the AGO Chief Administrative Officer (CAO) asserting the responsive record he received, the AGO's September 2017 report for the EOCJ Appropriations Subcommittee, was lacking the itemized information he requested, initially. The AGO CAO informed the Petitioner that all electronic data is maintained through the State's transparency website and that the AGO does not maintain spreadsheets/reports that would include the specific itemized information requested.

Petitioner explains his view of the Litigation Fund and access to the records for review without difficulty and resistance. Electronic records now make access available with reasonable precautions in place. He discusses his overlapping requests were the result of his unintended camping trip and being trapped for two days in the desert. The second request wasn't duplicative since no duplicative records were produced. Mr. Bennion felt that the records should be public and addressed the Transparency Website.



**Respondent (3:52:49)**

Mr. Pehrson's testimony reviewed his efforts to sit down with the petitioner and AGO's staff and to instruct the petitioner how to review the Transparency Website data in order to specify which cases he wanted itemized details in order to reduce the number of voluminous records the AGO would need to review and locate which would result in fees that would exceed \$50. Mr. Pehrson states that the Petitioner allowed his right to appeal to the State Records Committee to expire on his first request and then submitted a second request which was very similar to the first one but added 2017 to the records he wanted. This request was denied by the AGO and the AGO's CAO upheld the denial as unreasonably duplicative of the previous request for the years 2014, 2015, and 2016.

4:31:42 Respondent offered printouts for *in camera* review from the transparency website and the itemized details that contained private and protected information. Motion by Ms. Smith-Mansfield to go *in camera* to review the records. Seconded by Ms. Richardson. The motion carried, 5-0. The room was cleared of public attendees.

Stop recording for 10 minutes while Committee was *in camera*.

**Motion** by Ms. Richardson to return to open session. Seconded by Ms. Smith-Mansfield. Motion carried 5-0. Mr. Fleming, Ms. Richardson, Mr. Williams, Ms. Smith-Mansfield, and Mr. Haraldsen voting for the motion.

After reviewing the records *in camera*, the Committee found that the records contain both public and non-public records and that it is a voluminous request. The Respondent is allowed to estimate the fee required for producing the record and have the opportunity to classify them prior to releasing them.

**Discussion (4:47:55)**

Ms. Smith-Mansfield reviewed the assertion that this was a duplicative request and not specific enough. The second request was more specific and provided additional clarity. It is voluminous and time-consuming and takes a lot of resources to fulfill. The public has a right to inspect a public record, 63G-2-201(1). The governmental entity may charge a reasonable fee to cover the actual cost of providing the record minus the first quarter hour of the lowest paid person who is capable of doing the work. This includes redacting any non-public information. That is in §63G-2-203(2)(b). They can estimate how much time it will take to prepare the documents for viewing.

**Motion:** Ms. Smith-Mansfield made the motion that, pursuant to §63G-2-201(1), the public has the right to inspect a public record, subject to §63G-2-203(2)(b). The fees in this case are the actual costs for providing the records. These records are a combination of public and non-public records therefore there may be a fee associated for redaction of these records. Seconded by Ms. Richardson.



The motion carried 5-0. Mr. Fleming, Ms. Richardson, Mr. Williams, Ms. Smith-Mansfield, and Mr. Haraldsen voting for the motion. The Committee's Order **granted the appeal in part and denied in part.**

Break for five minutes **(4:51:05).**

**BUSINESS (4:51:20)**

**Discussion:** Rule 35 1-2 Procedure for Requests to Postpone Hearings. Rule was written prior to creation of position of the government records Ombudsman. There is a gap and it needs to be filled for more clarity for the boundaries of the discussions with the parties and the ombudsman and to keep them separate from the Committee. These are independent processes and the committee does not want one to interfere with the other. Postponements take up time on the calendar and create delays for other petitioners. Consideration of the time-limit requirements are discussed. The attorney could draft some possible variations on the rule for review at the next hearing. The ombudsman provided some information and discussion on this issue.

Parking lot items to consider at another time, perhaps in January:

- a. Other things that are asked for, reconsiderations, objections, court processes that do not apply to us.
- b. Can reconsider other rules. Can change rules any time but required to review every five years.
- c. Consider co-chairs and rotate every other month. Chair is a procedure not a rule so it doesn't require any official rule making process. Rotation is by seniority. Anyone can refuse to be Chair.

**Approval August 9 Minutes:**

A motion to approve the August 9, 2018, minutes was made by Ms. Smith-Mansfield and seconded by Mr. Williams. The motion carried, 4-0-1, with Mr. Haraldsen abstaining.

Discussion: Change the two-column written minute format for ease in reading on screens.

**Approval of Retention Schedules: None**

**Report on Appeals Received:**

Reviewed status of appeals received and scheduled.

**Report on Cases in District Court:**

Mr. Tonks provided updates on all current appeal cases under judicial review.

**Motion to Adjourn** by Ms. Smith-Mansfield.

**Chair: Adjourned at 4:11 p.m. (6:01:37)**

This is a true and correct copy of the September 13, 2018, SRC meeting minutes, which were approved on October 11, 2018. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>

X   
Executive Secretary

APPROVED